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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,002	12/14/2001	Frank Venegas JR.	IDS-14902/14	2404

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 02/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n N .

10/022,002

Applicant(s)

VENEGAS, FRANK

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5, 7-25 and 32-34 is/are allowed.
- 6) ☒ Claim(s) 6, 26, 27 and 31 is/are rejected.
- 7) ☐ Claim(s) 28-30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 December 2001 and 19 May 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This Office action is in response to the response filed December 4, 2003 (Paper No. 9).

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the limitation "the outer diameter of the metal tube". There is insufficient antecedent basis for this limitation in the claim. It is noted that claim 1, from which claim 6 depends, does not reference "metal tubes". *Rather*, claim 5 mentions "metal tubes".

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26, 27, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hartley '293 in view of Wilson '106.

Hartley '293 discloses an assembly comprising a plurality of horizontal (38) and vertical hollow members (48) having ends which are coupled with fittings (44 and 22) to create a skeletal

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area; a surface (unnumbered - in phantom lines) is supported by the horizontal and vertical members.

The claims differ from Hartley '293 in requiring: (a) some of the members to be covered with sheathing (claim 26), (b) that is polymeric (claim 26), and (c) the members to be metal tubes.

*With respect to (a)*, Wilson '106 teaches an assembly whereby the members are covered with sheathing (30).

*Thus*, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have provided the members in the assembly of Hartley '293 with sheathing for increased protection to the members against damage thereto.

*With respect to (b)*, although the references are silent as to whether the sheathing is polymeric, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the sheathing as polymeric sheathing for ease in economy and manufacture.

*With respect to (c)*, although Hartley '293 does not disclose the members being metal, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the members from metal for ease in economy and manufacture.



***Allowable Subject Matter***

Claims 1-5, 7-12; 13-15; 32; and 33-34 are allowed and claim 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to show or suggest a system, as specifically called for in the claimed combinations of claims 1, 13, 32, and 33 whereby "removable and replaceable polymerized sheathing" (see line 8 of claims 1, 13, and 32 and line 18 of claim 33) *surrounds* at least some of the members.

It is noted that the claims are not positively requiring that the sheathing be removed and replaced. Nonetheless, the prior art of record fails to show a sheathing that "surrounds" the members that is "polymerized" as well as being capable of being removable and replaceable. Note applicant's arguments in Paper Nos. 5 and 9.

Claims 28; 29; and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*With respect to claim 28*, the prior art of record fails to show or suggest furniture, as called for in claim 26, which comprises a cabinet suspended from the horizontal and vertical members, as specifically called for in the claimed combination of claim 28. It is noted that it would not have been obvious to have suspended a cabinet from the horizontal and vertical members in the system of Hartley since the prior art lacks a showing of this feature.

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*With respect to claim 29*, the prior art of record fails to show or suggest furniture, as called for in claim 26, whereby the sheathing is co-extensive with the member and the fitting covers a portion of the sheathing, as specifically called for in the claimed combination of claim 29.

*With respect to claim 30*, the prior art of record fails to show or suggest furniture, as called for in claim 26, whereby the sheathing is shorter than the member being covered and the fitting is relieved so the sheathing is flush with the fitting, as specifically called for in the claimed combination of claim 30.

### ***Response to Arguments***

Applicant's arguments, see page 1, filed December 4, 2003 (Paper No. 9), with respect to the Section 112, 1<sup>st</sup> rejection of claims 1, 13, 32, and 33, have been fully considered and are persuasive. The rejection of claims 1, 13, 32, and 33 has been withdrawn.

Upon further review of applicant's arguments filed with the amendment of May 19, 2003 (see Paper No. 5), the Section 103 rejections with respect to claims 1-25 and 32-34 have been withdrawn and an indication of allowable subject matter has been advanced above.

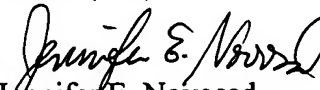
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1113.

  
Jennifer E. Novosad  
Primary Examiner  
Art Unit 3634

Jennifer E. Novosad/jen  
January 22, 2004